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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM,1975

****

ARCH K. STEINER

PETITIONER

*** VS ***

FRANK L. BALL JR. and
PAUL COMPHER and
ETTA MAE COMPHER, his wife

Respondents

****

PETITION FOR A WRIT OF CERTIORARI TO
THE SUMPREME COURT OF APPEALS FOR
THE COMMONWEAL OF VIRGINIA

****

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22201

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****

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ARCH K. STEINER, Plaintiff

vs.

FRANK L. BALL, JR. and
PAUL COMPHER and
ETTA MAE COMPHER, his wife,

Defendants

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1975

ARCH K. STEINER	)
	)
Petitioner	)
v.	)
FRANK L. BALL, JR.	)
	)
Respondent	)

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Arch K. Steiner, through his counsel, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Appeals for the Commonwealth of Virginia , in the case of Arch K. Steiner vs. Frank L. Ball, Jr., Record No. 750249.

The Supreme Court of the Commonwealth of Virginia refused to issue a Writ of Error to the Circuit Court of Arlington County by memorandum opinion, attached hereto as Exhibit No. N, rendered on the 13th day of August, 1975.

OPINIONS BELOW

The Supreme Court of Virginia, on August 13, 1975 denied the Writ of Error to review the trial court's ruling in this matter.

JURISDICTION

The trial was originally held in the Circuit Court of Arlington County, Virginia, where a demurrer was sus-

tained and an order to dismiss entered, and the Supreme Court of Appeals on August 13, 1975 denied the issuance of a writ of error to review same.

The jurisdiction of this Court is invoked under the Title 28 U.S.C. 1254(1), 62 Stat. 929 was presented.

Should the Supreme Court of the Commonwealth of Virginia have allowed the writ of error in the present case, when it appears from the pleading and the matters below that the statute of frauds is not an effective defense and that the demurrer of the trial courts should not have been sustained.

STATUTORY PROVISIONS INVOLVED

Statutory provisions involved jurisdiction of the trial court, Title 17, Section 123, Code of Virginia, 1950 as amended demurrer, Title 17, Sec.123, Code of Virginia, 1950 as amended, Title 11, Section 2, Virginia Code, 1950 as amended; and Title 55, Section 2, Virginia Code, 1950 as amended.

STATEMENT OF THE CASE

The petitioner, a private citizen, had lived next door to the deceased, Evan W. Compher, a mature citizen who died in the mid-sixties, and Bertha P. Compher, his mother, and widow of a deceased minister who died past the age of 97 years.

The proceeding below was commenced by the institution of a suit, Law No.

17193, by the Appellant alleging that he resides at 1505 North Herndon St., Arlington, Virginia, which property is immediately adjacent to the corner property owned and being administered by the defendant in the estate of Bertha P. Compher, and previously owned by and in the estate of her son, Evan W. Compher. The property is designated as Lot 648, Section 3, Lyon Village, Arlington, Virginia. That the appellant has been a resident of and adjacent neighbor of the said decedents for more than 20 years. That starting back about 1954, Evan W. Compher requested that the appellant undertake the maintenance of the corner lot which he owned and which he promised to give to the appellant in consideration of the appellant's maintenance and establishment of a lawn and shrubs on said property and for other personal services to him and his aged mother. That the will of Evan W. Compher is presently located in Will Book No. 75, Page 435, and provides for the transfer of said lot to his mother, Bertha P. Compher (age 97); however, the secondary contingency in said will provides that the lot in question should be given to the plaintiff, Arch K. Steiner. That in response to the promise and reliance thereon, the appellant did undertake to clean said lot of debris, briars, brambles, weeds, and did fill in the large sink hole therein, engaging a bulldozer to level the said lot; incurred additional expenses, and over the years has mowed and maintained with loving care appropriate shrubs and plants, all of which he purchased with his own funds and, in addition thereto, has rendered extensive

services to both Evan W. Compher and Bertha P. Compher, his mother, by feeding them and caring for them; transporting them to the hospital, to the doctors, to their lawyers and to other appointments. That after the death of Evan W. Compher and the lack of the transfer of the lot giving everything to his mother which superseded the promised gift to the appelant herein, the mother endeavored to set up an appointment with her attorney in order to change her will to effectuate the said transfer since she was knowledgable of the promises and of the agreement and concurred therein. That notwithstanding the many promises, the defendant, Frank L. Ball, Jr., never thought it convenient to make an appointment with the deceased for this purpose, as a result of which her will was never changed. That the heirs of Bertha P. Compher, namely, Paul W. Compher and Etta Mae Compher, his wife, have taken possession of the property and are actively destroying same, cutting down the shrubs and bushes with complete abandonment, destroying same as a yard, etc. The actions of Paul W. and Etta Mae Compher are rapidly destroying the property and its value as a scenic lawn to the detriment of the appellant.

Appellant prays that he be awarded damages against the said Frank L. Ball, Jr., Paul W. and Etta Mae Compher, to reasonably compensate him for his efforts thus expended.

REASONS FOR GRANTING THE WRIT

(1) Trial Court in error; that the plaintiff did not allege facts which would take the supposed agreement out of the requirements of the statute of frauds. That the same be in writing, Virginia Code 1950 as amended, Title 11, Section 2, and the provisions of Title 55, Section
(2) An oral contract for the conveyance of land which would constitute an exception to the provision of statute established by the facts alleged in the bill for specific performance and in the motion for judgment.
(3) Can an action for compensation for services alleged to have been rendered to Evan W. Compher be made the subject of a lawsuit against the executor of his mother's estate.

CONSTRUCTIVE TRUST

A trust raised by implication or by construction of law and presumed to exist for the supposed intention of the parties and the nature of the transaction. A resulting trust arises from the circumstances of the case and presumed by the Court. Cite the case of Ingals vs. Grear, 181 Virginia 838, Section 9, Michies Jurisprudence on Trust.

(The seventh section of the English statute of frauds, requiring all declaration or creations of trust to be manifested and proved by writing, though reenacted in many of the American states, is not in force in Virginia or West Virginia and, therefore, in these states, trusts may be proven by parol evidence.)

In the trial of this case, in addition to the parol evidence, the will of the decedent, Evan W. Compher, would have been offered into evidence, which will shows that the plaintiff herein, Arch K. Steiner, was a beneficiary to receive the lot in question. Evan W. Compher being some 30 odd years younger than his mother who suffered more than the usual infirmities attendant to age, therefore had every conceivable and logical conclusion that his mother would predecease him, and left the property to the plaintiff herein.

Also the case of Sterling vs. Blackwelder, 383 Fed. 2nd F. 2d; 282 (4th Circuit 1967); Wren vs. Tate, 191 Virginia 505, 97 SE., 2d; 48 Affirm on Rehab. 191, Virginia 59, 60 SE. 2nd, 54; Hoglund vs. Curtis, 134 West Virginia, 735 61 SE. 2nd 642.

The law has established over many years in the Commonwealth of Virginia that real estate can be transferred by parol evidence. This is specifically set forth in the case of Hill vs. Luck, 201 Virginia, page 586, a case in which the plaintiff cared for a relative who was elderly and there was the oral promise to convey land, the court held on page 589.

The requirements of law for the maintenance of a suit for specific performance of an oral contract within the statute of frauds have been frequently and clearly stated by court since 1872.

(1) The parol agreement relied on must be certain and definite in its terms.

(2) The acts approved in part performance must refer to, result from, or be made in pursuance of the agreement proved.

(3) The agreement must have been made so far executed that a refusal of full execution would operate a fraud upon the party and place him in a situation which does not lie in compensation. Wright vs. Pucket, 22 Gratt (63Va) 370.

(4) We have concern with the first requirement. It is said that although it has been lamented that the Court of Equity never departed in this particular from the precise terms of the statute yet the jurisdiction is now too firmly established to be shaken, otherwise than by statute. The doctrine, however, is reluctantly applied, and never further than the adjudged cases and the principles established by them require. Minor on Real Property, 2nd Ed., Ribble Vol. 2 1198, P. 1598.

Not only must the agreement be clearly proved but it must be complete, certain and definite in all its parts. Its terms must be so precise as to obviate any reasonable misunderstanding of its import; and if the terms be vague and uncertain, or the evidence to establish the contract be insufficient a court of equity will decline to interpose in order to enforce it, and will deleave the part to his legal remedy, if there be any. Minor on Real Property, 2nd Ed., Vol. 2 1207, pp. 1607, 1608,

CF; Patton vs. Patton, this day decided 201 Va. 705, 112 SE 2d.

The Supreme Court in the State of Virginia had decided in 1872, in the case of Wright vs. Pucket, 22 Gratt 370, the following:

Parol contract of land - Specific Performance - What three things must concur. The rule laid down in the principal case in regard to the three things that must concur in order to justify the Court in granting specific performance of a parol contract for the sale of land is followed in many subsequent cases as authority upon the subject. See Pierce vs. Catron 23, Gratt 598 and Note; Lester vs. Lester, 28 Gratt 743 and Note; Burkholder vs. Ludlan, 30 Gratt 260; Halsey vs. Peters, 79 Va. 67; Hurt vs. Prillaman, 79 Va. 263; Litterall vs. Jackson, 80 Va. 613; Barrett vs. Forney, 82 Va. 277; Edinhal Bullion Co. vs. Columbia, etc. Co., 87 Va. 616, 13 SE. Rep. 100; Hale vs. Hale, 90 Va 733, 19 SE Rep. 739; Gallagher vs. Gallagher, 31 W.Va. 13, 5 SE Rep. 297; Miller vs. Lomentz, 39 W.Va. 171, 19 SE Rep. 395. The principal case is cited in Boyd vs. Cleghorn, 94 Va. 783, 27 SE Rep. 574 as authority for the proposition that equity will lend its aid to defeat a fraud notwithstanding the Statute of Frauds if this is clear and evincing proof of the contract.

In the present situation, sometime in the early 1950's, the decedent, Evan W. Compher, promised the plaintiff that if he would undertake the cleaning up

of a lot of land which separated their homes and install thereon a lawn and maintain it during his lifetime that he would give the lot to the plaintiff. In reliance thereon, the plaintiff undertook to do this by clearing the lot of briars, brambles and filling in a hole on the lot, having same leveled by means of a bulldozer, planting thereon shrubs and other ornamental plants, all at his expense. Over the years the grass was cut and trimmed by the plaintiff or his sons and maintained in a park like setting.

In addition thereto, the plaintiff not only fed and entertained the deceased, Evan W. Compher and his mother, Bertha P. Compher, at their home on many occasions for meals; and on other occasions when meals were not furnished in the plaintiff's home, meals were furnished and taken over either by the plaintiff or his wife or his children, to see that the elderly folks were well cared for.

Further, the plaintiff did over the last 20 years of their lives and especially during the last 10 years, do all their running around, taking them to funerals, hospitals, doctors' appointments and most household errands which both of them had, in order to maintain their home and lives in an orderly fashion. The plaintiff on the demise of Evan W. Compher not only furnished his automobile for the family's convenience, taking the pall bearers to the burial site, some 100 miles away,but also took care of most arrangements concerning the funeral. Thereafter, because

the Sr. Mrs. Compher was of such an advanced age and could not drive, practical all her trips were with the plaintiff or his wife or his sons in vehicles owned and operated by the plaintiff.

The Court in the case of Pair vs. Rook, 195 Va. 196 (Sept. 1953) held:

Before a parol agreement will be taken out of the operation of the Statute of Frauds, upon the grounds of part performance and specifically enforced in equity, the contract must be certain and definite in its terms and the act on part performance must be the unequivocal act done except for the agreement.
(underscoring supplied)

In Plunkett vs. Bryant, Supra, at page 818, Judge Harrison, after citing Hale vs. Hale, Supra, and Wright vs. Pucket, Supra, had this to say:

"The principles upon which a court of equity will avoid the Statute of Frauds and enforce a parol agreement for the sale of land are well settled. They are briefly but clearly stated in Wright vs. Pucket, Supra, to be as follows: (1) The parol agreement relied on must be certain and definite in its terms. (2) The acts proved in part performance must refer to, result from, or be made in pursuance of the agreement proved. (3) The agreement must have been so far executed that a refusal of full execution would operate a fraud upon the party, and place him in a situation which does not lie in

compensation. These requisites must concur before a court of equity will decree specific execution. The act or acts of part performance must be of such an unequivocal nature as of themselves to be evidence of the execution (existence) of an agreement. They must be such as could be done with no other view or design than to perform the agreement. They must unequivocally refer to and result from an agreement and be such as the party would not have done unless on account of that very agreement, and with a direct view to its performance. The act must be sufficient of itself, without any other information or evidence to satisfy the court from the circumstances it has created, and the relations it has formed, that they are only consistent with the assumption of the existence of a contract, the terms of which equity will enforce. Until acts are alleged which, of themselves, imply the existence of such a contract, parol evidence to show its terms is inadmissible." (Citing cases.)

"Hence, until such actsa re shown as of themselves imply the existence of some contract, parol evidence to show the terms of the contract relied on is inadmissible * * * Now the alleged acts of part performance in the present case, taken singularly or collectively, do not bring the case within these principles. The making and preserving the wills, under the circumstances stated in the bill, while they are acts consistent with, are yet not demonstrative of, the existence of any contract

between the parties; or, in other words, they do not unequvocally show that there was a contract. Non constat, the wills were not made from motives of love and affection and independently of any contract or agreement; and, this being so, parol evidence to establish the alleged contract would not be admissible."

"Acts of part performance by the party seeking specific execution, to take a case out of the statute, must be of such an unequivocal nature as of themselves to be evidence of the existence of an agreement; as, for example, where, under a parol agreement to sell land, the purchaser is put into possession, and proceeds to make improvements. 2 Min, insts. (4th ed.), 853; 3 Pom. Eq., Sec. 1409. In the language of Lord Hardwicke, the acto of part performance 'must be such as could be done with no other view or design than to perform the agreement.' Gunter vs. Halsey, Amb. 586 "The principle of the cases, said Sir William Grant in Frame vs. Dawson, 14 Ves. 387, 'is that the act must be of such a nature that, if stated, it would of itself infer the existence of some agreement; and then parol evidence is admitted to show what the agreement is."

(2) In considering the circumstances under which evidence may be admitted in support of an oral contract for the devise of lands on the ground of part performance by and not upon anything that Rook was shown to have done or failed to do.

The Courts of Equity have nullified the principal of the Statute of Frauds

by use of Constructive Trusts and in the case of Porter vs. Shaffer, 147 Va 921 (May 1926), the Court held on page 928:

(3) In Merwin's Equity and Equity Pleading 127, constructive trusts are thus defined:

"Constructive trusts are those which independently of the intention of the parties, the law creates under certain circumstances, in order to prevent fraud or injustice which would otherwise ensue. These trusts are not based upon the presumed intention of the party. On the contrary, they exist contrary to that intention. As has been well said, they are trusts which are forced upon the conscience of the party by operation of law."

(4) "The distinction between resulting and constructive trusts is not one which can be adhered to with scientific accuracy. Indeed, many cases ordinarily classified as resulting trusts might with almost equal propriety be treated as constructive trusts, because the presumptionof intention in these cases is a forced presumption--contrary to the actual fact--and is imputed to the party only to prevent an intended fraud. Nor is the distinction of much practical importance, whether called 'resulting' or 'constructive' trusts, they are governed by the same rules, and they are alike implied by law, in contradistinction from being created by the parties."

And the Court further held on pages 930-931:

(5)"Nor can a Court of Equity specifically enforce the verbal contract set up by the bill in this case, under the prayer for general relief, upon the ground of part performance of said contract. The principles upon which a court of equity will avoid the statute of frauds upon the ground stated are well and firmly established. These principles are: (1) That the contract must be clear, definite and unequivocal in all its terms, and established by clear and satisfactory proof; (2) That the acts of part performance must refer to, result from, or be made in pursuance of the agreement proved; (3) the agreement must have been so far executed that a refusal of full execution would operate a fraud on the other party and place him in a situation which does not lie in compensation. Cranes Nest Coal & Coke Co. vs. Virginia Iron, Coal & Coke Co., 108 Va. 862, 62 SE. 954,1119; Henley vs. Cottrell, 101 Va.70, 43 SE. 191; Plunkett vs. Bryant, 101 Va. 815, 45 SE. 742; Wright vs. Pucket, 22 Gratt (63 Va.) 370."

This court is a much older case, Halsey vs. Peters, Executors, et al, 79 Va. 60, held no writing is necessary to create a good equitable title to real estate. The Statute of Frauds has no bearing on present gifts of land, which are founded on meritorious considerations. If the promise, reduced to writing, could, under the circumstances be enforceable it may be enforced even when only parol.

This court in a 1927 case Daniel vs. Viar, 147 Va. 323, held on page 328 and page 329:

(6) This court, in an elaborate opinion, concludes that at common law, before the enactment of the statute of frauds, an express trust in lands could be created by parol; that the seventh section of the English statute requires a writing for the proof of an express trust in lands, and the eighth excepts from its operation resulting trusts, but as these sections have never been enacted in Virginia, the matter of parol trusts rests as it die at common law; that the omission of these sections was conclusive of the fact that the sixth section did not exclude parol trusts, and held that the statute of frauds in no way affected the case.

(7) The second point raised here, viz, that the admission of oral proof of the parol trust would violate the parol evidence rule, is also ruled by the holding in Young vs. Holland, Supra. It is there said:

"Counsel for appellees have argued with great force that to maintain the express trust by parol evidence would violate that principle of law nowhere more closely adhered to than in this State, that parol evidence cannot be admitted to vary, contradict, add to or explain the terms of a written agreement. If at the common law an express declaration of trust, such as is here sought to be established, was lawful, and if by the statute of frauds as adopted in this State the common law was not in this respect altered, then such an express declaration remains lawful. In the nature of things an oral declaration can only be

established by oral evidence, and we do not think that the position can be maintained that an oral declaration of trust is sanctioned by our law and the only possible mode of proof is to be excluded; in other words, we cannot maintain a right and exclude the only mode of proof by which that right can be established."

Virginia Statute of Frauds sets forth in Title 11, Section 2, Code of Va. 1950 as amended; annotations on page 140 of Volume 3, set forth a great many cases under the specific caption that the Statute of Frauds is not applicable to express parole trusts in realty. Among these are Young vs. Holland, 117 Va. 433, 84 SE. 637 (1915); Fleenor vs. Hensley, 121 Va. 367, 93 SE. 582 (1917); Russell vs. Pazmore 127 Va. 475, 103 SE. 652; Daniel vs. Viar 147 Va. 323.

CONCLUSION

It is, therefore, respectfully submitted to this Honorable Court, that this matter should be reversed and remanded to the Trial Court below for an order overruling the demurrer, and allowing this mtter to go to trial.

APPENDIX A

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

ARCH K. STEINER Plaintiff vs. FRANK L. BALL, JR., Executor of Estate of Mrs. Bertha P. Compher, also as Executor of the Estate of Evan W. Compher, 1437 N. Courthouse Road Arlington, Virginia 22201 and PAUL COMPHER and ETTA MAE COMPHER, his wife, 5730 N. 22nd Street Arlington, Virginia Defendants	)	IN CHANCERY NO. 24508

BILL OF COMPLAINT
FOR SPECIFIC PERFORMANCE

TO THE HONORABLE JUDGES OF THE SAID ARLINGTON COUNTY CIRCUIT COURT, your plaintiff, ARCH K. STEINER, respectfully represents:

1. That he resides at 1505 North

Herndon Street, Arlington, Virginia, which property is immediately adjacent to the corner property owned and being administered by the Defendant in the estate of Bertha P. Compher and previously in the estate of her son, Evan W. Compher. The property is designated as Lot 648, Section 3, Lyon Village, Virginia; all of the said property is in Arlington, Virginia.

2. That he has been a resident of and adjacent neighbor of the said decedents for more than 20 years.

3. That starting back about 1954, Evan W. Compher requested that the Plaintiff undertake the maintenance of a corner lot which he owned and which he promised to give to the Plaintiff in consideration of the Plaintiff's maintenance and establishment of a lawn and shrubs on said property.

4. That the Will of Evan W. Compher presently located in Will Books No. 75, page 435 et seq., provides in paragraph B of item 3 for the transfer of Lot 648, Section 3, Lyon Village, Virginia, to the Plaintiff.

5. That in response to the promise and reliance thereon the Plaintiff did undertake to clean the lot of the debris, briars, brambles, weeds, and did fill in the hole therein, engaging a bulldozer to level said lot; incurred additional expense and over the years has mowed, maintained with loving care, appropriate shrubs and plantings all of which he purchased with

his own funds and in addition thereto has rendered extensive service both to Evan and to his mother in feeding them, caring for them, transporting them to the hospital and the doctors; to their lawyer and to other appointments.

6. That after the death of Evan and the lack of the transfer because of the item giving everything to his mother superseded the gift to the Plaintiff herein, the mother endeavored to set up an appointment with her attorney in order to change her Will to effectuate said transfer since she was knowledgeable of the promises and of the agreement and concurred therein.

7. That notwithstanding the many promises of the defendant, Frank L. Ball never thought it convenient to make an appointment with the deceased for this purpose, as a result of which her Will was never changed.

8. That her heirs, Paul W. Compher and his wife, Etta Mae Compher, have taken possession of the property and are actively destroying same, cutting down the shrubs and bushes with complete abandonment, destroying same as a yard, etc.

9. That said action on behalf of the defendants, Paul W. Compher and Etta Mae Compher, are rapidly destroying the property and its value as a scenic lawn to the detriment of the Plaintiff.

WHEREFORE, the Plaintiff prays that the said Frank L. Ball, Paul Compher,

and Etta Mae Compher be compelled on their part to perform and comply with the provisions of the contract and that said defendants may be compelled to execute a deed to the Plaintiff.

AND, FURTHER, that the defendants, Paul W. Compher and his wife, Etta Mae Compher, be restrained and enjoined from terminating or cutting down any more bushes or shrubs, all in accordance with the contract made by Evan W. Compher and concurred in by his mother, Bertha P. Compher, also deceased.

AND to the said Frank L. Ball, Paul Compher and Etta Mae Compher, be made defendants to this Bill and be required to answer same.

That your Plaintiff may have such other and further relief and general relief of the premises, the nature of the case may require, and to equity shall seem meet.

ARCH K. STEINER

CHARLES B. SULLIVAN, JR.
Attorney for Plaintiff
3132 N. 10th St., Suite 200
Arlington, Virginia 22201
525-5331

APPENDIX B

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

ARCH K. STEINER	)	
	)	
Complainant	)	
	)	
vs.	)	
	)	
FRANK L. BALL, JR.	)	
Executor of Estate of	)	
Mrs. Bertha P. Compher	)	IN CHANCERY
also as Executor of	)	NO. 24508
Estate of Evan W. Compher	)	
	)	
and	)	
	)	
PAUL COMPHER and ETTA MAE	)	
COMPHER, his wife	)	
	)	
Defendants	)	
	)	

D E M U R R E R :

COME NOW, the defendants, and each of them, and demur to the Bill of Complaint and say the same is not sufficient in law and for grounds of said Demurrer the demurrants say:

1. The Bill of Complaint, and each allegation thereof, attempts to fix a responsibility for the conveyance of land upon a purported oral promise.

2. The Bill of Complaint, and each

allegation thereof, shows that no owner of the lot claimed due to the complainant ever agreed in writing to convey the same to the complainant, but on the other hand the allegations show that the decedent, Evan W. Compher, did, by his Last Will and Testament duly probated, convey the said lot in fee simple to his mother, Bertha P. Compher, the other decedent mentioned in the Bill of Complaint, and that the decedent, Mertha P. Compher, by her Will duly probated, conveyed the said property by devise to the defendants, Paul Compher and Etta Mae Compher, lawfully, and in proper order and that the Bill of Complaint shows upon its fact that no caveat was ever filed as to her Will.

3. The title to the real estate is in Paul Compher and Etta Mae Compher by duly executed and recorded instruments lawfully conveying the same.

4. The Bill of Complaint, and each allegation thereof, shows that the complainant seeks to establish title to real estate through some oral conversation the date, place and time of which and exact substance of which are not even pleaded and, even if pleaded, are insufficient in law to become a contract for the sale or conveyance of real estate or an obligation to convey the same under the law of Virginia.

Frank L. Ball, Jr.,
Executor of Estate of
Mrs. Bertha P. Compher
also as Executor of the

Estate of Evan W.
Compher

_____
Paul Compher

_____
Etta Mae Compher
Defendants,
By Counsel

BALL, McCARTHY, BALL & GREEN
1437 North Courthouse Road
Arlington, Virginia 22216

By: _____
Frank L. Ball, Jr.,
Counsel for Defendants

I certify that on the 5th day of August, 1974, I mailed a copy of the foregoing pleading to each counsel of record.

_____
Frank L. Ball, Jr.

APPENDIX C

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

ARCH K. STEINER Complainant vs. FRANK L. BALL, JR., Executor of the Estate of Mrs. Bertha P. Compher, also as Executor of the Estate of Evan W. Compher and PAUL COMPHER and ETTA MAE COMPHER, his wife Defendants	IN CHANCERY NO. 24508

MOTION TO DISMISS BILL OF COMPLAINT

COME NOW, the Defendants, and each of them, and move the Court to dismiss the Bill of Complaint for Specific Performance filed against them, and each of them, in this action and for grounds of said motion respectfully set forth as follows:

1. The defendant, Frank L. Ball, Jr., as Executor of the Estate of Bertha P. Compher, deceased, under her will pro-

bated in Arlington, Virginia, Arlington County, and also as Executor of the Estate of Evan W. Compher, now closed, under his Will also probated in the Circuit Court of Arlington County, Virginia, had no authority over, control of, nor responsibility for the real estate referred to in the Bill of Complaint, the same being not a part of the estate administered by the Executor which consisted of personalty only but instead was conveyed by the provisions of each Will as provided therein.

2. The Bill of Complaint for Specific Performance does not allege any agreement in writing to convey the said property as is required under the law.

3. The Bill of Complaint itself is a sham shown by the allegations of Paragraph 3 thereof alleging that one Evan W. Compher promised orally to give the complainant a lot of land worth $30,000.00 in response for the complainant maintaining a lawn and shrubs on said property.

4. The complaint is insufficient in law and alleges no fact upon which the relief prayed for could be granted under any law in Virginia.

Frank L. Ball, Jr., Executor of Estate of Mrs. Bertha P. Compher, also as Executor of Estate of Evan W. Compher

Paul Compher

ETTA MAE COMPHER
Defendants, By Counsel

BALL, McCARTHY, BALL & GREEN
1437 North Courthouse Road
P. O. Box 727
Arlington, Virginia 22216

By: _____
Frank L. Ball, Jr.
Counsel for Defendants

I certify that on the 5th day of August 1974, I mailed a copy of the foregoing pleading to each counsel of record.

_____
Frank L. Ball, Jr.

APPENDIX D

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

ARCH K. STEINER Plaintiff vs. FRANK L. BALL, JR., Executor of the Estate of Mrs. Bertha P. Compher, also as Executor of the Estate of Evan W. Compher and PAUL COMPHER and ETTA MAE COMPHER his wife Defendants	))))))))))))))) IN CHANCERY NO. 24508

POINTS AND AUTHORITIES FOR DEMURRER TO BILL OF COMPLAINT

1. The Virginia Statute of Frauds, Section 11-2, Code of Virginia, 1950 as amended, has repeatedly been held to apply to contracts for the testamentary disposition of real estate. Hill vs. Luck, 201 Va. 586 (1960).

Equity will allow specific performance as the leading case in Virginia, Wright vs. Puckett, 22 Gratt (63 Va.) 370 (1872) establishes the requirements to enforce an oral promise to convey real estate. They are (a) the agreement relied on is

certain and definite in its terms, (b) the acts proved in part performance must refer to, result from, or be made in pursuance of the agreement proved, and (c) the agreement must have been so far executed that a refusal of full execution would operate as a fraud upon the party, and place him in a situation which does not lie in compensation. Where they do not, it will turn the party over to seek compensation in damages in a court of law.

Here, the complainant has an adequate remedy at law.

2. In Pair vs. Rook, 195 Va. 196 (1953), a demurrer to the Bill of Specific Performance and to the amended Bill was sustained. "In considering the issue raised by the demurrers, that is, the sufficiency of the bills of complaint, the only facts to be considered are those which are alleged in the bills." p. 204.

3. In Pair vs. Rook, supra, the test of the alleged part performance, as set forth in Plunkett vs. Bryant, 101 Va. 814, on p. 818, is well recognized:

"The act or acts of part performance must be of such an unequivocal nature as of themselves to be evidence of the execution (existance of an agreement. They must be such as could be done with no other view or design than to perform the agreement. They must unequivocally refer to and result from an agreement, and with a direct view to its performance." P. 205 (Emphasis added).

"The certainty of the contract relied on must appear from the pleadings and the

act of part performance alleged must of itself unequivocally evidence the existence of an agreement." P. 209.

"Nor do we think that because P.I. Rook may have permitted the appellants and some of the appellees to rent, occupy or use some of his property that such a fact shows or implies that there was any parol agreement between him and his wife to make a will upon the terms alleged." p. 210.

4. Wright vs. Puckett, supra, states the third requirement as the lack of remedy at law. The complainant improved land for eight years that belonged to the decedent. The court stated the general rule which is still law in Virginia.

"Nor has there been in this case such part performance as cannot be compensated in damages. There was nothing in the situation of the appellee to prevent his recovery, in a suit at law, full indemnity and compensation for the services he rendered to the appellant's intestate; and that was his plain and adequate remedy. The tendency of all the modern cases, both in England and in this country, is to prefer giving the party compensation in damages instead of specific performance. (at 377). Cited in Porter vs. Shaffer, 147 Va. 921 (1926)."

5. There is no allegation in the Bill of Complaint that Bertha P. Compher and the plaintiff had a contract concerning the subject property; the allegation merely states, "she was knowledgeable of the promises..."

6. By virtue of Section 55-2, of the Code of Virginia, 1950, as amended, no right to a conveyance of land accrues to a donee under a promise of gift unless the same be in writing, even though followed by possession and improvements by the donee. Mann vs. Mann, 159 Va. 240 (1932).

7. The law has been well settled in Virginia that "no judgment against the executors can bind the heirs, or in any manner affect them." Pierce vs. Graham, et al, 85 Va. 277 (1888) p. 235. The statement in Pierce is now Section 64.1-181, Code of Virginia, 1950 as amended. Speaking of this statute, the Court said in Pierce, "It makes real estate descended or devised (not charged by the will with debts) legal assets in the hands of the heir and devisers, but there would seem to be the same lack of privity now as before between the personal representatives and the heir or devisee..." The executor is charged as such with the administration of the personal assets, and such real assets as may be charged with the payment of debts by the will, but otherwise his relations to the real estate, to the heir descended or devised, remain as heretofore; that is, as such he has no concern with them whatever." p. 235.

The executor is therefore an improper defendant.

Respectfully submitted,

_____

Defendants, By Counsel

BALL, McCARTHY, BALL & GREEN
1437 North Courthouse Road
Arlington, Virginia 22216

By: _____
Frank L. Ball, Jr.
Counsel for Defendants

APPENDIX E

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

ARCH K. STEINER Complainant vs. FRANK L. BALL, JR., Executor of the Estate of Mrs. Bertha P. Compher also as Executor of the Estate of Evan W. Compher and PAUL COMPHER and ETTA MAE COMPHER, his wife Defendants	IN CHANCERY NO. 24508 FINAL ORDER OF DISMISSAL

THIS CAUSE came on to be heard upon the Bill of Complaint and the Demurrer filed thereto by all of the Defendants and was argued by counsel and after being considered by the Court and the Court being of the opinion that the Demurrer should be sustained on the grounds that the Bill of Complaint is barred by the Statute of Frauds, it is

ADJUDGED, ORDERED and DECREED that the Demurrer to the Bill of Complaint filed in this cause be and the same hereby is

sustained and the complaint is hereby dismissed.

The Complainant, through his counsel, excepted to the ruling of the Court.

THIS DECREE IS FINAL.

ENTERED:

_____
JUDGE

SEEN:

BALL, McCARTHY, BALL & GREEN

By: _____
Attorney for Defendants

_____
Charles B. Sullivan, Jr.
Attorney for Complainant

APPENDIX F

VIRGINIA

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

ARCH K. STEINER	)	
	)	
Complainant	)	
	)	
vs.	)	
	)	
FRANK L. BALL, JR.	)	
Executor of the Estate	)	
of Mrs. Bertha P. Compher	)	
also as Executor of the	)	
Estate of Evan W. Compher	)	IN CHANCERY
	)	NO. 24508
and	)	
	)	
PAUL COMPHER and ETTA MAE	)	
COMPHER, his wife	)	
	)	
Defendants	)	
	)	

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

TO THE CLERK OF THE CIRCUIT COURT OF ARLINGTON COUNTY:

Counsel for Arch K. Steiner , Complainant in the above-styled case, in the Circuit Court of Arlington County, Virginia, hereby gives notice of appeal from the Order entered in this case on November 13, 1974, and sets forth the following assignments of error:

1. That the Court erred in refusing

to overrule the Defendants' motions and sustaining the demurrer as being contrary to the statute of frauds

ARCH K. STEINER, By Counsel

CHARLES B. SULLIVAN, JR.
Attorney for Complainant
3132 North 10th Street, Suite 200
Arlington, Virginia 22201
525-5331

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, this 9th day of December, 1974, to Frank L. Ball, Jr., Attorney for Defendants 1437 N. Courthouse Road, P. O. Box 727, Courthouse Station, Arlington, Virginia 22216.

CHARLES B. SULLIVAN, JR.

VIRGINIA APPENDIX G

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

ARCH K. STEINER Plaintiff vs. FRANK L. BALL, JR. Executor of Estate of Mrs. Bertha P. Compher 1437 N. Courthouse Road Arlington, Virginia 22201 and PAUL COMPHER and ETTA MAE COMPHER, his wife 5730 22nd Street North Arlington, Virginia Defendants	)))))))))AT LAW NO.)17193))))))))

MOTION FOR JUDGMENT

The undersigned hereby moves the Circuit Court of Arlington County, Va., for a judgment against you, and each of you in the sum of Thirty Thousand Dollars ($30,000.00), with interest thereon from the 6th day of February, 1974 until paid together with the costs incident to this proceeding, all of which is justly due from you to the undersigned Arch K. Steiner, under and by virtue of a certain continuing agreement between the late Evan W. Compher, as well as the late Mrs. Bertha P. Compher, his mother, dating back as far

as 1954.

1. That the plaintiff for 20 years was next door neighbor and close friend to the late Mrs. Bertha P. Compher who died at age 98 plus, on February 6,1974, and her son, Evan W. Compher, age 64, who died on July 22, 1972. Evan never married and lived with his mother in the same household at 3165 Key Boulevard, Arlington, Virginia. Evan was a male stenographer with the U. S. Coast Guard until he retired in the late 1960's. He was physically impaired and not inclined towards participation in household maintenance, general repair or yard work. He very seldon ever took part in any of the work.

2. That Evan W. Compher entered into an agreement with the plaintiff and his two sons to undertake the cleaning up, grading, planting, care and maintenance of a corner lot of land which he owned between the two houses and which was at that time overgrown and a neighborhood menace and health hazard. The lot included a sink hole covered with growth, broken limbs of dead trees, broken glass, tin cans, discards, snakes, rats and covered with undergrowth including masses of poison ivy. Whereupon the plaintiff and his children cut the growth from the land, removing the excess trees, briars, weeds and debris which made it unusable; paid from personal funds to have it hauled in considerable fill earth to fill sinkage and rented from personal funds a bulldozer to level and landscape land; purchased from personal funds and

and planted trees, shrubs and grass which they maintained with loving care for the past 20 years, 1954 through 1974.

3. Evan W. Compher did promise that if the plaintiff cleaned up the lot and maintained it for the benefit of himself, his mother, as well as the plaintiff's family, that the lot would be transferred to the plaintiff. In an attempt to accomplish this objective the said Evan W. Compher did make a provision in his Will that the plaintiff would receive this lot. He did not contemplate nor would it be normal to do so, that he would not survive his mother who at the time of his Last Will was 92 years old and 23 years his senior, however, he did not.

4. The late Mrs. Bertha P. Compher did have knowledge and concurred in this promise of Evan's and referred to the lot as that of the plaintiff's and many times after Evan's death did promise the plaintiff that she would see that this wish was carried out and did promsie the plaintiff to reimburse him for any expenses paid by him on her house and for services to her in connection with Evan's illness and funeral, and her estate and livelihood after Evan's death. In an effort to accomplish this desire, the late Mrs. Bertha Compher made several appointments with her attorney, Mr. Frank Ball, but was never able to see him. At the request of Mrs. Bertha P. Compher the plaintiff set up appointments and took her to the office of Mr. Frank Ball on several occasions, all without success. Mrs. Compher wrote a letter to Mr. Ball attempting to set up an appointment for

a change in her will to make this objective a reality and Mr. Ball never set up an appointment as requested.

5. That the low and reasonable value of the services which the plaintiff has rendered to Evan and his mother personally and for benefit to them and their properties in Virginia and Florida, in revitalizing and making thelot into a lawn with shrubs and grass and flowers, as well as maintaining it and their property over the years is $30,000.00.

6. The defendants, Paul Compher and Etta Mae Compher as the heirs at law and next of kin of the late Mrs. Bertha Compher have inherited the land, and presently enjoying same.

WHEREFORE, the plaintiff demands judgment against the defendants and each of them in the sum of $30,000.00 for the thousands of hours of work, effort and services that he put into the lot and their home with the understanding that he was doing so for his own benefit, since the lot was to be given to him for so doing, all besides costs hereof.

ARCH K. STEINER

CHARLES B. SULLIVAN, JR.
Attorney for Plaintiff
3132 North 10th Street
Arlington, Virginia 22201
525-5331

APPENDIX H

VIRGINIA

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

ARCH K. STEINER	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
FRANK L. BALL, JR. Executor of the Estate of Mrs. Bertha P. Compher	)	AT LAW NO. 17193
	)	
and	)	
	)	
PAUL COMPHER and ETTA MAE COMPHER, his wife	)	
	)	
Defendants	)	

PLEA OF THE STATUTE OF FRAUDS

COME NOW, the defendants, and each of them, and say that the Motion for Judgment filed against them in this action and recovery thereunder is barred by the provisions of the statute of frauds in such cases made and provided, to-wit: Section 11-2 of the Code of Virginia, 1950 as amended, in that there is no allegation of any writing signed by Bertha P. Compher or her estate or executor to pay for any bills or services alleged to have been performed for Evan W. Compher.

There is no paper writing signed by either Evan W. Compher or Bertha P. Compher acknowledging any debt to be charged against the defendants, Paul Compher and Mae Compher.

_____
Frank L. Ball, Jr., Executor
of the Estate of Mrs. Bertha P.
Compher

_____
Paul Compher

_____
Mae Compher
Defendants, By Counsel

BALL, McCARTHY, BALL & GREEN
1437 North Courthouse Road
Arlington, Virginia 22216

By: _____
Frank L. Ball, Jr.
Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that on the 7th day of August, 1974, I mailed, postage prepaid, a copy of the foregoing Pleas of the Statute of Frauds to Charles B. Sullivan, Jr.,Esq., 3132 N. 10th St., Arlington, Virginia 22201, Attorney for Plaintiff.

_____
Frank L. Ball, Jr.

APPENDIX I

VIRGINIA

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

ARCH K. STEINER	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
FRANK L. BALL, JR. Executor of Estate of Mrs. Bertha P. Compher	)	AT LAW NO. 17193
	)	
and	)	
	)	
PAUL COMPHER and MAE COMPHER, his wife	)	
	)	
Defendants	)	
	)	

PLEA OF THE STATUTE OF LIMITATIONS

COME NOW the defendants, and each of them, and say that the Motion for Judgment filed against them in this action is barred by the statute of limitations in Virginia in such cases made and provided, to-wit: Section 8-13 of the Code of Virginia, 1950, as amended.

Frank L. Ball, Jr. Executor of Estate of Mrs. Bertha P. Compher

Paul Compher

Mae Compher
Defendants, by Counsel

BALL, McCARTHY, BALL & GREEN
1437 North Courthouse Road
Arlington, Virginia 22216

By: _____
Frank L. BAll, Jr.
Counsel for Defendants

I certify that on August 7, 1974, I mailed a true copy of the foregoing pleading to each counsel of record for the plaintiff.

_____
Frank L. Ball, Jr.

APPENDIX J

VIRGINIA

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

ARCH K. STEINER Plaintiff vs. FRANK L. BALL, JR., Executor of the Estate of Mrs. Bertha P. Compher also as Executor of the Estate of Evan W. Compher and PAUL COMPHER and ETTA MAE COMPHER, his wife Defendants	))))))))))))))) AT LAW NO. 17193

POINTS AND AUTHORITIES ON STATUTE OF LIMITATIONS

The Statute of Limitations begins to run from the time that the services were performed unless a contract is established. If a contract is established, the Statute of Limitations begins to run from the date that the primisor repudiated the contract. Cochran v. Bise, 197 Va.483 (1955).

Respectfully Submitted

Defendants, By Counsel

BALL, McCARTHY, BALL & GREEN
1437 North Courthouse Road
Arlington, Virginia 22216

By: _____
Frank L. Ball, Jr.
Counsel for Defendants

APPENDIX K

VIRGINIA

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

ARCH K. STEINER Complainant vs. FRANK L. BALL, JR. Executor of the Estate of Mrs. Bertha P. Compher and PAUL COMPHER and ETTA MAE COMPHER, his wife Defendants	)))))))AT LAW NO.)17193))))))

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO THE CLERK OF THE CIRCUIT COURT OF ARLINGTON COUNTY:

Counsel for Arch K. Steiner, Complainant in the above-styled case in the Circuit Court of Arlington County, Virginia, hereby gives notice of appeal from the Order entered in this case on November ___, 1974, and sets forth the following assignments of error:

1. That the Court erred in refusing to overrule the Defendants' motions and sustaining the demurrer as being contrary

to the statute of frauds.

ARCH K. STEINER, By Counsel

CHARLES B. SULLIVAN, JR.
Attorney for Complainant
3132 N. 10th St., Suite 200
Arlington, Virginia 22201
525-5331

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, this __ day of December, 1974, to Frank L. Ball, Jr., Attorney for Defendants 1437 N. Courthouse Rd., P. O. Box 727, Courthouse Station, Arlington, Virginia 22216.

CHARLES B. SULLIVAN, Jr.

APPENDIX L

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

ARCH K. STEINER	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
FRANK L. BALL, JR., Executor of the Estate of Mrs. Bertha P. Compher	)	AT LAW NO.17193
	)	FINAL ORDER OF
and	)	DISMISSAL
	)	
PAUL COMPHER and ETTA MAE COMPHER, his wife	)	
	)	
Defendants	)	

THIS CASE came on to be heard upon the Motion for Judgment filed by the Plaintiff herein and the Demurrer and Pleas filed by the Defendants and was argued by Counsel.

WHEREUPON, the Court having maturely considered the Demurrer and the Pleas and the argument of Counsel and being of the opinion that the action should be dismissed as being contrary to the Statute of Frauds of Virginia, it is

AJDUDGED, ORDERED AND DECREED that the Demurrer filed by all of the Defendants to

the Motion for Judgment in this case be, and the same hereby is, sustained on the ground that the cause of action alleged in the Motion for Judgment is contrary to the Statute of Frauds of Virginia.

This case is dismissed and ordered stricken from the docket.

The Plaintiff, by his counsel, excepted to the ruling of the Court.

This order is final.

ENTERED:

_____
JUDGE

SEEN:

BALL, McCARTHY, BALL & GREEN

BY: _____
Attorney for Defendants

_____
Charles B. Sullivan, Jr.
Attorney for Plaintiff

APPENDIX M

IN THE
SUPREME COURT OF APPEALS OF VIRGINIA
AT RICHMOND

ARCH K. STEINER

Appellant

CHANCERY NO. _____

vs.

FRANK L. BALL, JR., et al

Appellees

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

ARCH K. STEINER

Appellant

vs. LAW NO. _____

FRANK L. BALL, JR., et al

Appellees

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

MOTION TO CONSOLIDATE APPEALS

COMES NOW, the Appellant, by and through Counsel, and moves this Honorable Court to consolidate these appeals for argument at the same time and consideration together, and as reasons therefor says as follows:

1. That the subject matter is the same.

2. That the Appellant seeks the relief asked in only one of the two appeals, and not both.

3. That the facts are the same.

4. That the law is in some particulars the same.

ARCH K. STEINER

By: _____
Counsel

_____

CHARLES B. SULLIVAN, JR.
Counsel for Appellant
3132 N. 10th Street
Arlington, Virginia 22201
525-5331

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, this 28th day of February, 1975, to: Frank L. Ball, Jr., Attorney for Appellees, 1437 North Courthouse Road, Arlington, Virginia 22216.

_____
CHARLES B. SULLIVAN, JR.

APPENDIX N

VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 13th day of August, 1975.

The petition of Arch K. Steiner for an appeal from final orders entered by the Circuit Court of Arlington County on the 13th day of November, 1974, in certain proceedings then therein depending entitled: Arch K. Steiner vs. Frank L. Ball, Jr., Executor, etc., et al. (In Chancery No. 24508), having been maturely considered and transcripts of the records of the orders aforesaid seen and inspected, the court being of opinion that there is no reversible error in the orders appealed from, doth reject said petition and refuse said appeal, the effect of which is to affirm the orders of the said circuit court.

Record No. 750249 A Copy

Teste:

Howard G. Turner
Clerk

By: _____
Allen L. Lucy
Deputy Clerk

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-692

ARCH K. STEINER, *Petitioner*

v.

FRANK L. BALL, JR. and PAUL COMPHER and ETTA MAE COMPHER, his wife, *Respondents*

BRIEF IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI

Respondents, in this, their Brief in Opposition to the Granting of a Writ of Certiorari prayed for by Petitioner, desire to cover only the question of Jurisdiction and the Question Presented.

JURISDICTION

Jurisdiction of the Supreme Court is said by Petitioner to be invoked under "Title 28, USC 1254(1), 62 Stat. 929" (Petitioner, page 2).

No such jurisdiction is conferred by the cited statute, which applies only to appeals from United States Circuit Courts of Appeals.

Only under the provisions of Title 28, USC 1257 is granted to the Supreme Court jurisdiction to review final judgments of the highest court of a state, and then only to test the validity of a treaty or statute of the United States, or to test the validiy under the Federal Constitution of a State statute or immunity.

Petitioner does not and could not assert any Federal question involved.

The decision of the Virginia Supreme Court here complained of was the holding by that Court that an action for money judgment and a complaint for specific performance by the Petitioner in the State Court were barred by the State Statute of Frauds, which State Statute is not attacked as repugnant to the Federal Constitution or any United States Statute.

Thus, no fact or statute upon which the jurisdiction of the Supreme Court may be invoked is set forth in the Petition.

QUESTION PRESENTED

While there is no designation in the Petition of the "Question Presented for Review" as required by the Supreme Court Rule 40, Respondents assume the last paragraph under the designation "Jurisdiction" (page 2) to have been intended as such a statement. It obviously does not present any Federal question but, on the contrary, would seek to have the Supreme Court act as an additional Virginia Court of Appeals to sit as a final Court of Appeal from the Court of last resort in Virginia, where State litigation and questions are, and must be, finally decided.

If such a burden could be thrust upon the Supreme Court, every unsuccessful party to an appeal in the

State Court of last resort could file a frivolous petition to the Supreme Court and artificially extend the time of finality of judgment of the ruling of all State courts. Such is exactly what is sought by the Petitioner in this case and a mere reading of the "question presented" under the erroneous designation "jurisdiction" in Petition (page 2) reveals the Petitioner to here complain of a single State question already decided. He does not complain of the validity of the State statutes. He complains only of the application of the statutes by the State Court, a matter necessarily within the final and exclusive jurisdiction of the State Courts.

CONCLUSION

Respondents respectfully submit that Petitioner has presented no question for which the jurisdiction of the Supreme Court may be invoked. Thus, Respondents deem it unnecessary to reply or comment further upon the Petition.

Respectfully submitted,

FRANK L. BALL, JR.
Counsel for Respondents